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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/674,852	12/14/2000	Axel Schamal	225/49355	5694
23911	7590	10/06/2006	EXAMINER	
CROWELL & MORING LLP INTELLECTUAL PROPERTY GROUP P.O. BOX 14300 WASHINGTON, DC 20044-4300			REIS, TRAVIS M	
			ART UNIT	PAPER NUMBER
			2859	

DATE MAILED: 10/06/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	09/674,852	SCHAMAL, AXEL	
	Examiner	Art Unit	
	Travis M. Reis	2859	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 06 July 2006.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1,3-6 and 8-10 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1,3-6 and 8-10 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--------------------------------------------------------------------------------------|-------------------------------------------------------------------|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Claim Rejections - 35 USC § 103

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. Claims 1 & 6, are rejected under 35 U.S.C. 103(a) as being unpatentable over Hosken (U.S. Patent 4265002) in view of Poupitch (U.S. Patent 2650516).

Hosken discloses a device for magnetically fastening articles, comprising a post (29) for fitting into the hole (5) in the body parts (2, 4) for gripping them together (Figures 1-3), and an attachment element which is releasably connectable (25, 27) to the post (Figure 1), with the post fitted into the hole, rest on a surface of the body part (Figure 3) surrounding the hole, wherein the attachment element has a shell (10) made of nonmagnetic material (col. 3 lines 32-33) and a magnetic insert (30) arranged within the shell, wherein a lower edge of the shell bears substantially flush against a lower side of the insert (Figures 2 & 3). Furthermore, the placement of the device on an article, by virtue of its existence, determines the position of a hole.

Hosken does not disclose the post is a spike, the shell has an essentially hemispherical or partially spherical shape, or that the body parts are from a motor vehicle.

Poupitch discloses a dash liner clip (20) in which articles are secured to the floor or dash panels of the vehicle (col. 1 lines 10-13); wherein said dash liner clips have a partially spherical head (26) (Figures 1 & 2) and the inserted end (30) is pointed (Figure 1 & 3) forming a spike since Webster's dictionary defines a spike as "a long thick pointed piece of wood or metal". Therefore, it would have been obvious to one with ordinary skill in the art at the time of the invention was made to shape the head of the device disclosed by Hosken in a partially spherical

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shape in order that the shell does not jut out from the body but is smooth, smaller and unobtrusive and does not catch on other articles and to shape the post with a pointed end in order to be more easily inserted into the hole. Furthermore, it would have been obvious to one with ordinary skill in the art at the time of the invention was made to use the device disclosed by Hosken to fasten vehicle parts such as a dash panel or floor of a vehicle as taught by Poupitch since this is an alternative type of fastening means to keep any two articles connected together.

3. Claims 3 & 4 are rejected under 35 U.S.C. 103(a) as being unpatentable over Hosken & Poupitch as applied to claims 1 & 6 above, and further in view of Hall (U.S. Patent 2419134).

Hosken & Poupitch do not disclose the spike has an upper part with a screw thread which is adapted to pass through the insert and be screwed to the inside of the shell.

Hall discloses a locator (1) utilizable in forming metal articles with a shell section (6a) with interior screw threads (7) for accepting a threaded connector (61) to secure the shell to the connector (col. 2 line 22-24) (Figures 1 & 3). Therefore, it would have been obvious to one with ordinary skill in the art at the time of the invention was made to add the screw thread disclosed by Hall to the upper part of the spike and the interior of the shell disclosed by Hosken & Poupitch in order that the shell is securely held to the attachment element & spike.

4. Claims 5, 8-10 rejected under 35 U.S.C. 103(a) as being unpatentable over Hosken, Poupitch, & Hall as applied to claims 3 & 4 above, and further in view of Le (U.S. Patent 4789287).

Ham, Poupitch, & Hall disclose all of the instant claimed invention as stated above in the rejection of claims 1, 3, 4, & 6, but do not disclose expressly a spike fastened to the attachment element in an asymmetrical manner with respect thereto.

Le discloses a through bolt (3) with an asymmetric head (7) to allow fastening in otherwise inaccessible locations (Figures 1-5)(Abstract). Therefore, it would have been obvious

to one with ordinary skill in the art at the time of the invention was made to make the attachment element taught by Ham, Poupitch, & Hall asymmetrical as taught by Le, thereby receiving the spike in an asymmetrical manner in order that the device could provide fastening in otherwise inaccessible locations.

Response to Arguments

5. In response to applicant's arguments that nothing in Poupitch disclosure indicates the Poupitch head is made smooth in order to be more aerodynamic; these arguments are persuasive, however, an alternate obvious motivation has been used in the rejection, since Figures 1, 2, 8, & 9 show a smaller, smoother, & unobtrusive, than other fasteners of the type which tend to jut out and potentially catch on other articles. Hence one skilled in the art (i.e. Hosken) would see the obvious advantages of being more unobtrusive, smoother, & smaller, as taught by the Poupitch reference and seek to modify the head.

6. In response to applicant's argument that there is no suggestion to combine the references (i.e. with regard to modifying the post disclosed by Hosken with the pointed post disclosed by Poupitch), the examiner recognizes that obviousness can only be established by combining or modifying the teachings of the prior art to produce the claimed invention where there is some teaching, suggestion, or motivation to do so found either in the references themselves or in the knowledge generally available to one of ordinary skill in the art. See *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988) and *In re Jones*, 958 F.2d 347, 21 USPQ2d 1941 (Fed. Cir. 1992). In this case, an obvious advantage of a pointed end as taught by Poupitch fitting into a sloped edge as disclosed by Hosken would be that it would be faster than allowing a blunt end, as disclosed by Hosken, to settle into said sloped edge, and furthermore a near miss by a blunt end would be longer to correct to reinsert than a pointed end.

7. In response to applicant's arguments that Poupitch employ fastening means in a

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completely different way than Hosken; these arguments have been fully considered but they are not persuasive since while once fastened they may behave differently, these remain alternate fastening means which achieve the same result of fastening two articles fastened together.

8. In response to applicant's argument that neither Hosken nor Poupitch disclose a device for determining or measuring a position of a hole in a motor vehicle part and instead are concerned with fastening, these arguments have been fully considered but they are not persuasive since the placement of the device on an article, by virtue of its existence, determines the position of a hole. When two articles are fastened together by the device disclosed by Hosken & Poupitch it is done through a hole, and hence, the device determines said hole's position.

Conclusion

9. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Travis M. Reis whose telephone number is (571) 272-2249. The examiner can normally be reached on 8--5 M--F.


If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Diego Gutierrez can be reached on (571) 272-2245. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you

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would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000

Travis M Reis
Examiner
Art Unit 2859



Diego Gutierrez
Supervisory Patent Examiner
Tech Center 2800

tmr
September 28, 2006